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Supreme Court, U.S.
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No. _____

In the
SUPREME COURT OF THE UNITED STATES

October Term, 1999

Zena D. Crenshaw, *Petitioner,*

v.

Randall T. Shepard, et. al., *Respondents.*

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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Questions Presented

1. Whether the United States Court of Appeals transgressed the petitioner's right to due process and equal protection by modifying its standard for federal intervention and retroactively applying the new law to sustain a district court's dismissal of her otherwise cognizable complaint;

2. Whether the United States Court of Appeals transgressed the petitioner's right to due process and equal protection by subjecting her to a supposed trend relating to professional disciplinary matters impacting attorneys licensed by the State of Indiana while bypassing the state's medical profession; creating a standard for motions to dismiss that defies notice pleading and prematurely preempts discovery in her case; and equating due process with a fair appeal as to her, regardless of bias in the first instance;

3. Whether the United States Court of Appeals transgressed the petitioner's right to due process and equal protection by acquiesing to the reported determination by the Supreme Court of Indiana of her motive for pursuing federal intervention, culminating with the present petition, thereby sanctioning a new criteria for federal abstention that

overrides recognized exceptions to the doctrine.

List of Parties

PARTIES BEFORE THE COURT:

SHEPARD, RANDALL T., personally and as Chief Justice of the Supreme Court of Indiana;

BOEHM, THEODORE R., personally and as Associate Justice of the Supreme Court of Indiana;

DICKSON, BRENT E., personally and as Associate Justice of the Supreme Court of Indiana;

SELBY, MYRA C., personally and as Associate Justice of the Supreme Court of Indiana;

SULLIVAN, FRANK Jr., personally and as Associate Justice of the Supreme Court of Indiana;

LUNDBERG, DONALD R., personally and as Executive Secretary for the Disciplinary Commission of the Supreme Court of Indiana;

SHOOK, ROBERT C., personally and as Staff Attorney of the Disciplinary Commission for the Supreme Court of Indiana;

PARTIES TO THE PROCEEDING IN THE COURT WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED IN ADDITION TO THOSE PRESENTLY BEFORE THE

COURT:

The Supreme Court of Indiana;

The Disciplinary Commission of the Supreme Court of Indiana.

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In the
SUPREME COURT OF THE UNITED STATES

October Term, 1999

Zena D. Crenshaw, *Petitioner,*

v.

Randall T. Shepard, et. al., *Respondents.*

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

Zena D. Crenshaw respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit, affirming as modified a judgment by the United States District Court for the Southern District of Indiana, dismissing her complaint for declaratory and injunctive relief, without prejudice, pursuant to the doctrine of federal abstention.

Opinions Below

The opinion of the court of appeals and district court are unreported and set forth, respectively, as Appendix B and Appendix D.

Jurisdiction

On March 15, 1999, the court of appeals entered its judgment affirming as modified a judgment by the United States District Court for the Southern District of Indiana, dismissing Ms. Crenshaw's complaint for declaratory and injunctive relief, without prejudice, pursuant to the doctrine of federal abstention. (App D). Her petition for rehearing with suggestion for rehearing en banc was filed with the appellate court on March 26, 1999 and denied on April 12, 1999. (App E). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

The jurisdiction of the district court was invoked pursuant to 28 U.S.C. §1331.

Statement of the Case

Zena D. Crenshaw is an African American, female attorney who is the subject of a grievance before the Disciplinary Commission of the Supreme Court of Indiana (Disciplinary Commission) filed by Richard M. Cagen, a white male attorney. Donald R. Lundberg, Executive Secretary for the Disciplinary Commission, propounded a subpoena upon Ms. Crenshaw to facilitate investigation of the grievance. Guided by Indiana trial rules in the absence of parallel administrative provisions promulgated by the Supreme Court of Indiana for its Disciplinary Commission, Ms. Crenshaw served Mr. Lundberg with a verified motion to quash the subpoena. Staff attorney for the Disciplinary Commission, Robert C. Shook, responded as follows:

> While you are correct the Indiana Supreme Court has exclusive jurisdiction in all disciplinary matters, the provisions of Admission and Discipline Rule 23 provide the authority under which the Indiana Supreme Court Disciplinary Commission acts . Under Admission and Discipline Rule 23, Section 8 and Section 9, the Disciplinary Commission has the authority to conduct investigations into all attorney conduct, but not limited to misconduct as provided

by R.P.C. 8.4.

Please note Admission and Discipline Rule 23, Section 9(f) which authorizes the issuance of subpoenas by the Executive Secretary. Also please note your failure to obey the subpoena "shall be punished as a contempt of the court" (the Indiana Supreme Court).

I understand your position that you do not believe your actions involving your mother's estate were taken as an attorney, but only as your mother's issue. However, the issues determined or considered by either civil or criminal courts do not restrict the Disciplinary Commission from moving ahead with its investigation.

My investigation has not been completed due to your failure to honor the subpoena. Please respond as requested in the subpoena on or before February 17, 1998. In addition to the contempt action, your failure to respond to our subpoena can also result in a separate rule violation of the Rules of Professional Conduct, to wit: 8.1(b). Our subpoena and my letter are considered a "lawful demand for information" under this rule.

(R, Doc #1, Cmplt, Ex. B). (emphasis added).

Ms. Crenshaw, an advocate of judicial reform, unheralded by the State of Indiana, (R, Doc #13, Ex C-M), subsequently forwarded a complaint for declaratory and injunctive relief to the United States

District Court for the Southern District of Indiana contending she faced imminent threat of contempt for exercising her right as an American citizen to, in good faith, challenge, object to, and move to quash a subpoena. (R, Doc#1, Cmplt). The defendants, including but not limited to the current respondents, filed a joint motion to dismiss the complaint, with supporting documents, on May 6, 1998. (R, Doc #9&10, Mtn Dsms). In response, Ms. Crenshaw, *inter alia*, detailed a controversy, referenced by her complaint, arguably converting the "Cagen Grievance" to an avenue for her special prosecution. (R, Doc#13, Resp Brf).

The district court entered judgment against Ms. Crenshaw on July 1, 1998, reasoning in part as follows:

> 1. Plaintiff Crenshaw is an attorney licensed to practice before the Indiana Supreme Court and the lower courts of Indiana. A complaint charging her with misconduct has been lodged with the Disciplinary Commission of the Indiana Supreme Court ('Disciplinary Commission'). That complaint has triggered the following process:
>
> Disciplinary actions before the Indiana Supreme Court are

conducted in accordance with the Indiana Admission and Discipline Rules. As a general matter, the initial or investigative step occurs when the Commission's Executive Secretary inquires in the charges brought against an attorney to determine whether 'there is a reasonable cause to believe that the respondent is guilty of misconduct. . . .' Ind.Admin.Disc.R. 23(10)(b). If the Executive Secretary determines that such cause exists, the grievance is then passed on to the whole Commission, which may either dismiss the grievance or file a complaint with the Indiana Supreme Court.

Once a complaint is filed, the Supreme Court appoints an officer to preside over the disciplinary hearing. The adjudicative stage of the proceedings then commences with an adversarial hearing, where the attorney charged with misconduct is given an opportunity to respond to the charges, be represented by counsel, cross-examine witnesses and produce evidence and witnesses on his own behalf. After the hearing, the hearing officer 'shall determine whether misconduct has been proven by clear and convincing

evidence and shall submit to the Supreme Court written findings of fact.' Disc.R.23(14)(f).

The appellate stage of the disciplinary proceedings begins when either the charged attorney or the Commission files a petition for review of the findings or recommendations with the Indiana Supreme Court. The court may either adopt the findings and recommendations submitted or, after review of the record, issue its own findings and discipline.

Sterns v. Lundberg, 922 F.Supp. 164, 166-67 (S.D.Ind. 1996).

2. The matter involving Crenshaw has passed the investigative stage and has resulted in the filing of a grievance. In conjunction with that grievance, the executive secretary of the Disciplinary Commission issued a subpoena to Crenshaw for the production of certain materials. Crenshaw challenged the subpoena, which the Disciplinary Commission then found should be honored. This action followed. Through it, Crenshaw seeks to have enforcement of the subpoena halted, the disciplinary proceeding stayed, and portions of the Indiana Disciplinary Rule 23 declared invalid.

(App B, p 2-4).

Ms. Crenshaw established by verified motion to amend findings

and the judgment accordingly:

> . . .
>
> 5. There has not been a complaint filed against (her) within the meaning of the Admission and Discipline Rules of the Disciplinary Commission
>
> . . .
>
> 6. The defendant's Motion to Dismiss with declaration of defendant Lundberg, exhibits and supporting memorandum, repeatedly confirm that the grievance at issue is in the investigative stage
>
> . . .
>
> 9. On March 13, 1998, nearly one (1) month after the (referenced case) was filed, the Disciplinary Commission determined that the subpoena propounded upon (her) should be honored.
>
> (R, Doc#17, Mtn Amd).

Nonetheless, her motion was overruled without discussion on July 16, 1998. (App C).

Ms. Crenshaw's notice of appeal was filed on July 23, 1998. (R, Doc#19, Not Apl). The defendants subsequently offered the following analysis:

> The district court introduced its decision by stating that a "complaint" had been filed with the Disciplinary Commission, triggering the Rule 23 process. Later, the court stated that the proceeding against Crenshaw "passed the investigative stage

and . . . resulted in the filing of a grievance." The court also stated that Crenshaw challenged the subpoena, the Disciplinary Commission found that the subpoena must be followed, and "[t]his action followed. Crenshaw says these statements are erroneous.

The statements are not perfectly accurate. No formal *complaint* has yet been filed against Crenshaw. It would have (sic) more precise to say that a *grievance* was filed against Crenshaw, that the grievance passed the *initial review* stage, which resulted in the case being *docketed for investigation.* The court also got things slightly out of order: Crenshaw challenged the subpoena with a motion to quash, then filed suit in federal court, after which the Disciplinary Commission considered and denied her motion to quash.

. . .

Review of the district court's minor misstatements shows that they were inconsequential to the outcome of the abstention inquiry and therefore harmless.

(Appee Brf, p 10-11). (appendix references omitted).

Ms. Crenshaw countered with precedent established only months before her appeal:

Middlesex County Ethics Committee v. Garden, etc., 102 S.Ct. 2515 (1982), involved a matter in which ". . . the Committee investigated (a) complaint and concluded that there was probable cause to believe that Hinds had violated DR1-

102(A)(5) of the Disciplinary Rules of the Code of Professional Responsibility." *Id. at 2519.* (emphasis added). Similarly, *Ohio Civ. Rights Com'n v. Dayton Christian Schools,* 106 S.Ct. 2718 (1986), was launched when "(t)he Commission notified Dayton that it was conducting a preliminary investigation . . . , determined that there was probable cause to believe that Dayton had discriminated against Hoskin based on her sex and had retaliated against her . . . (and) initiated administrative proceedings against it by filing a complaint." *Id. at 2721.* (emphasis added). In both cases, the United States Supreme Court emphasized the fact that the proceedings at issue ". . . are of a character to warrant federal-court deference." *Middlesex at 2522.* This Court recently stated its analysis in clear terms: "So the proceeding is the kind covered by *Younger,* but is it ongoing?" *Orville Lynn Majors v. Katie Engelbrecht, et. al.,* 149 F3d 709 at 718 (7th Cir 1998). The question is posed in a case following an Attorney General's complaint for the permanent revocation of a nursing license. *Id. at 712.* The answer is no for the present case in which the ". . . federal plaintiff beats the state to court -- and gets past the preliminary stages." *Id. at 718-719.* (citation omitted).

The defendants acknowledge speculation that the grievance culminating with the present appeal was docketed because defendant Lundberg ". . . did not realize or take into account . . . that Crenshaw was acting in her 'personal capacity' and not as an attorney in handling her mother's estate." (Appees' Brf p 5). Accordingly, the record is not

clear that anyone determined there is reasonable cause to believe the plaintiff is guilty of misconduct. More importantly, the Disciplinary Commission of the Supreme Court of Indiana (Commission) has not made that determination and cannot do so immediately because the prerequisite investigation is incomplete. The "state" is a considerable way from the disciplinary complaint that would signal its court arrival.

(Rply Brf, p 4-7). (footnotes omitted).

The United States Court of Appeals resolved the parties' debate by its decision of March 15, 1999. (App D).

On March 26, 1999, Ms. Crenshaw petitioned the Seventh Circuit for rehearing with suggestion for rehearing en banc on the following grounds:

. . .

3. The decision is a departure from precedent with equal protection implications in that it subjects Indiana lawyers, including the appellant, to a supposed trend, effective and applicable, but bypassing the state's medical profession only months ago in *Orville Lynn Majors v. Katie Engelbrecht, et. al.*, 149 F.3d 709 (7th Cir. 1998);

4. The Court's ruling effectively precludes notice pleading in cases subject to federal abstention by determining that the underlying complaint fails to allege the minimum material

facts, adequate to overcome a motion to dismiss;

5. It creates a standard for motions to dismiss that can prematurely preempt discovery as it does with regard to the appellant;

6. The decision equates due process with a fair appeal, regardless of bias in the first instance, effectively rescinding *Trust & Investment Advisors, Inc. v. Hogsett,* 43 F.3d 290 (7th Cir. 1994), and contradicting *Gibson v. Berryhill,* 36 L.Ed. 2d 488 (1973), to the extent they provide otherwise;

(Pet Rhrng, p 4-5).

After briefing her contentions, she offered the following conclusion:

> The appellant prays that the court pass the occasion of her case to change the law as doing so has equal protection implications and otherwise transgresses her right to due process as specified above. The Court's opinion herein is a departure from precedent which apparently sanctioned federal intervention under the facts and circumstances culminating with this appeal. The appellant prays that her case be remanded, at least, to develop those facts and circumstances through discovery and evidentiary hearing. She further prays for any and all other relief, just and proper upon the premises.
>
> (Pet Rhrng, p 12-13).

On April 9, 1999, Ms. Crenshaw was suspended from the practice

of law by the Supreme Court of Indiana, effective on Mother's Day in the related grievance prompted by her mother's death. (App F).

The Supreme Court of Indiana directed its Clerk to appropriately circulate the Order suspending Ms. Crenshaw, allowing it to reach the United States Court of Appeals for the Seventh Circuit. (App F, p 23). Pivotal to the suspension is a determination of her motive for pursuing the case culminating with the present petition:

> The federal courts have declined at every turn her invitations to intervene in this matter. Presumably this reflects their view that the proper, indeed only means to challenge the propriety of a pending investigation by the Disciplinary Commission is to appear and respond on the merits to the allegations. In fact, we view her strategy as not so much to put before us legitimate assertions of bias, but rather to use vague and wholly unsubstantiated claims of bias on the part of unidentified persons to camouflage attempts to dictate the procedure employed to resolve the grievance.
>
> (App F, p 21).

Apparently exasperated with Ms. Crenshaw, the Supreme Court of Indiana refuses to hear her claims deferred to it by the United

States Court of Appeals. Nonetheless, Ms. Crenshaw's petition for rehearing with suggestion for rehearing en banc was summarily denied by the Seventh Circuit on April 12, 1999. (App E).

Reasons for Granting the Writ

Noting that the fourth amendment prohibition against unreasonable searches and seizures does not extend to subpoenas *duces tecum*, the Supreme Court of Indiana explained:

> No officer or other person has sought to enter petitioner's premises against their will, to search them, or to seize or examine their books, records, or papers without their assent, otherwise than pursuant to orders of court, authorized by law and made after adequate opportunity to present objections, which in fact were made.
>
> *State Ex. Rel. Pollard v. Criminal Ct. of Marion Cty*, 329 N.E.2d 573 at 585 (1975). (emphasis added).

Ms. Crenshaw sought such an opportunity in response to a subpoena propounded upon her by Donald R. Lundberg. The reply authored by Robert C. Shook, does little more than threaten sanctions (including mandatory contempt), creating issues that the underlying subpoena foreshadowed in addition to those apparent

on its face and addressed by the aforementioned motion. It confirmed that Ms. Crenshaw was the target of what by all indications is a procedurally unprecedented investigation - arguably, retaliatory special prosecution.

The factors prompting Ms. Crenshaw's resort to federal court have not abated, but assumed a seemingly unprecedented insignificance in the common law. The United States Court of Appeals denied her a forum, unduly increasing the vulnerability of lawyers like her, attempting to resist local and/or regional bias. Accordingly, the requested writ should issue to restore the status quo as it prevailed before the Seventh Circuit interpreted the doctrine of federal abstention in the context of Ms. Crenshaw's appeal. Her "day in court", pursued at great risk, would thereby be redeemed.

> **Retroactively nullifying precedent deemed final and acted upon accordingly, thereby divesting a claimant of his or her cause, violates basic norms of constitutional adjudication and transgresses Ms. Crenshaw's right to due process and equal protection in the present**

case.

Ms. Crenshaw appealed the district court's analysis of her case anticipating debate on pivotal findings of fact and their implications under law as determined by judgment. Instead, the defendants invited the United States Court of Appeals to substantially abandon the lower court's findings of fact and law. (Appee Brf, p 10-12). In so doing, they advocate a departure from precedent or an application of law that Ms. Crenshaw and the trial court apparently misconstrued.

Only months before the Honorable Larry J. McKinney rendered the decision culminating with the present petition, his ruling prompted a case that Ms. Crenshaw embraced in which a federal plaintiff could realistically "beat the state to court" when a professional license was jeopardized. *See, Orville Lynn Majors v. Katie Engelbrecht, et. al.*, 149 F.3d 709 at 718-719 (7th Cir. 1998). The United States Court of Appeals never distinguished the case in denying Ms. Crenshaw relief. (App D). Instead, the Court explains:

> Our holding today is consonant with that of the other circuits that have considered the issue and recognized that attorney disciplinary proceedings, by their nature, are progressive, incremental processes; the federalism concerns that *Younger* and *Middlesex* protect are implicated when the attorney is subject to a formal investigative procedure like the one contemplated by Rule 23, section 10(b).
>
> (App D, p 12).

The Seventh Circuit has yet to confirm whether Ms. Crenshaw merited a federal forum before reaching the foregoing fork in precedent.

Retroactivity is a subject aligned with "explicit and substantial" breaks from precedent. *See, Teague v. Lane*, 489 U.S. 288 (1989). ". . . (A) case announces a new rule if the result was not dictated by precedent . . ." *Id. at 301.* Ms. Crenshaw endeavored to establish that her result was not dictated or otherwise warranted by circuit precedent. (Rply Brf, 4-7). She substantially premised her appeal on the cited considerations.

It is well established that '. . . (q)uestions of . . . prior determinations deemed to have finality and acted upon accordingly

. . . demand examination.' *Id. at 308-309.* Nullifying them retroactively, thereby divesting a claimant of his or her cause, ". . . violates basic norms of constitutional adjudication." *Id. at 304.* The United States Court of Appeals transgressed Ms. Crenshaw's right to due process and equal protection to the extent that it did so in the present case.

The United States Court of Appeals transgressed Ms. Crenshaw's right to due process and equal protection by subjecting her to a supposed trend relating to professional disciplinary matters that impacts attorneys licensed by the state of Indiana while bypassing the state's medical profession.

The disposition of Ms. Crenshaw's appeal at issue reflects a substantial departure from or development parallel to *Orville Lynn Majors v. Katie Engelbrecht, et. al.,* 149 F.3d 709 (7th Cir. 1998). As a practical matter, the current ruling precludes federal intervention that an Indiana lawyer does not secure nearly upon notice of a request for investigation targeting him or her before the Disciplinary Commission, absent exceptional circumstances. *See,*

Indiana Rules For Admission To The Bar And The Discipline Of Attorneys, Rule 23, Section 10, and *Middlesex County Ethics Committee v. Garden State Bar Association*, 102 S.Ct. 2515 at 2521 (1982). The effect is that such a proceeding categorically passes the first and second prong of the recited *Middlesex* test because federal intervention is foreclosed before it reasonably implicates national rights. The third is essentially the only prong for federal recourse in such cases.

Ms. Crenshaw and practicing Indiana lawyers succumb to a supposed trend that has yet to impact the state's medical profession. Only months before, the United States Court of Appeals quipped: "So the proceeding is the kind covered by *Younger*, but is it ongoing?" *Orville Lynn Majors v. Katie Engelbrecht, et. al.*, 149 F.3d 709 at 718 (7th Cir. 1998). Federal plaintiffs could realistically beat the state to court when a medical license was jeopardized. *Id. at 718-719.*

Indiana lawyers are likely to meet an imperative instead of a question at the steps of district court: So the proceedings involve

disciplinary matters, go back to state court! Such is Ms. Crenshaw's fate which was not apparent when she first sought court relief. Her federal forum was divested pursuant to a rule that arbitrarily prefers health care providers in violation of her right to due process and equal protection, or that should be applied prospectively.

The United States Court of Appeals transgressed Ms. Crenshaw's right to due process and equal protection by creating a standard for motions to dismiss that defies notice pleading and prematurely preempts discovery in her case.

Ms. Crenshaw alleged an event reasonably qualifying as motive for retaliation; established a temporal connection between that event and the challenged conduct; characterized that conduct as unprecedented; provided details to prove it unwarranted; and identified the federal rights offended. The United States Court of Appeals apparently grasped her related abstention analysis:

> She alleged in her complaint that the Commission's investigation is 'unlawful retaliation' for her publicly documented allegations of impropriety in

> the Indiana state courts. In essence, she is arguing for an application of the bad faith exception to the *Younger* doctrine.
>
> (App D, p 13).

Yet it determined:

> In order to establish her entitlement to the bad faith exception to the *Younger* doctrine, Ms. Crenshaw must allege specific facts to support her inferences of bad faith, bias and retaliation. She must present more than mere allegations and conclusions.
>
> (App D, p 14).

Ms. Crenshaw acknowledged by petition for rehearing that a "complaint which merely recites statutory language and related legalese but fails to allege minimal material factual allegations outlining violation of law (is) insufficient." *Perkins v. Silverstein,* 939 F.2d 463 at 467 (7th Cir. 1991). However, the Court would not contend with the implication of including her complaint among such pleadings.

A complaint must identify the grounds upon which it is based. *Id. at 467.* Correspondingly, "a district court should not dismiss a complaint if the plaintiff could prevail 'under any set of

facts that could be proved consistent with the allegations'."

Luckett v. Rent-A-Center, Inc., 53 F.3d 871 at 873 (7th Cir. 1995) citing *Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S.Ct. 2229, 2232, 81 L.Ed. 59 (1984). The United States Court of Appeals essentially raised the threshold for federal intervention in Ms. Crenshaw's case to undisputable proof.

The Seventh Circuit suggests by its disposition of the appeal at issue that federal intervention cannot be premised on inferences or contingent upon discovery, the benefit of which Ms. Crenshaw has not had. Apparently, only details of the most blatant bias will get Indiana lawyers past the district court gatekeeper in discipline matters. The United States Court of Appeals transgressed Ms. Crenshaw's right to due process and equal protection by subjecting her to such a standard of pleading.

The United States Court of Appeals transgressed Ms. Crenshaw's right to due process and equal protection by equating due process to a fair appeal as to her, regardless of bias in the first instance.

The respondents never resisted the argument and, therefore, should be deemed to concede that Donald R. Lundberg and Robert C. Shook are biased as a matter of law by virtue of being respondents in Ms. Crenshaw's charge of retaliation before the Indiana Civil Rights Commission. *See, United States v. Spector,* 72 S. Ct. 591 at 593 (1952). They failed to exonerate Lundberg and Shook regarding Ms. Crenshaw as a matter of fact. Yet, the Seventh Circuit reports:

> We agree with the district court that nothing in the record suggest that the Supreme Court of Indiana could not or would not fairly entertain a constitutional challenge to the subpoena.
>
> (App D, p 14).

The Court thereby equates a fair appeal with due process, regardless of bias in the first instance, effectively rescinding *Trust & Investment Advisors, Inc. v. Hogsett,* 43 F. 3d 290 (7th Cir. 1994), to the extent it provides otherwise, in violation of Ms. Crenshaw's right to due process and equal protection. *See, Gibson v. Berryhill,* 411 U.S. 564, 93 S. Ct. 1689, 36 L.Ed. 2d 488 at 499 (1973).

The United States Court of Appeals transgressed Ms. Crenshaw's right to due process and equal protection by acquiescing to the reported determination by the Supreme Court of Indiana of her motive for pursuing federal intervention, culminating with the present petition, thereby sanctioning a new criteria for federal abstention that overrides recognized exceptions to the doctrine.

On March 26, 1999, Ms. Crenshaw petitioned the Seventh Circuit for rehearing with suggestion for rehearing en banc in the case prompting the present petition. Her prayer for relief impeached the Court's assurance ". . . that nothing in the record suggests that the Supreme Court of Indiana could not or would not fairly entertain a constitutional challenge to the subpoena." (App D, p 14). Approximately two (2) weeks later, Ms. Crenshaw was suspended from the practice of law by the state court. (App F).

The Supreme Court of Indiana directed its Clerk to appropriately circulate the Order suspending Ms. Crenshaw, allowing it to reach the United States Court of Appeals for the Seventh Circuit. (App F, p 23). Pivotal to the suspension is a determination of her motive for pursuing the case culminating with

the petition at hand:

> The federal courts have declined at every turn her invitations to intervene in this matter. Presumably this reflects their view that the proper, indeed only means to challenge the propriety of a pending investigation by the Disciplinary Commission is to appear and respond on the merits to the allegations. In fact, we view her strategy as not so much to put before us legitimate assertions of bias, but rather to use vague and wholly unsubstantiated claims of bias on the part of unidentified persons to camouflage attempts to dictate the procedure employed to resolve the grievance.
>
> (App F, p 21).

Apparently exasperated with Ms. Crenshaw, the state court refuses to hear her claims deferred to it by the United States Court of Appeals. Nonetheless, Ms. Crenshaw's aforementioned petition for rehearing was summarily denied on April 12, 1999. (App E).

The United States Court of Appeals indicates that the Supreme Court of Indiana must allow Ms. Crenshaw ". . . adequate opportunity to raise constitutional challenges." (App D, p 11). Apparently it concludes that such an opportunity was allowed

though it could not be realized without mooting the present case.[1] The Supreme Court of Indiana equates prosecution of this case with contempt and the Seventh Circuit acquiesces.

The United States Court of Appeals and the Supreme Court of Indiana seemingly agree that a reportedly recalcitrant party should not have a forum for his or her federal claims. They

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[1] The Supreme Court of Indiana reports:

> At the hearing on the Commission's motion to hold the respondent in contempt, the respondent made very general reference that "bias" on the part of the complaining party and the Commission staff fuels these proceedings. She asked that she be allowed to conduct discovery in order to substantiate her claims of bias and requested that she be allowed to preserve her other challenges. She also claimed that it is proper to wait and allow her to exhaust all avenues of redress with the federal courts before this matter is allowed to proceed.
>
> . . .
>
> Nonetheless, we will take the respondent's oral presentation as constituting a motion to quash and consider in that light.
>
> . . .
>
> If there is any basis for claiming the proceedings against the respondent are not being pursued in good faith by the Commission or anyone else, the respondent has provided us with no evidence to support that claim.
>
> The respondent's other unsupported allegations, still unspecific after almost a year since their genesis, provide no evidentiary basis to quash the subpoenas.
>
> . . .

transform a litigant's alleged "attitude" to a criteria for federal abstention and Ms. Crenshaw may never return to the practice of law as a result. She has been subjected to a "fourth prong" of the well established *Middlesex* test, overriding considerations previously dictated by the third prong of the analysis.

The Seventh Circuit and the Supreme Court of Indiana diverge in that the former abstains as to Ms. Crenshaw's federal claims while the latter deems them illusory. In any event, she has pursued federal intervention at a great risk unrelated to the merits of her underlying cause. The United States Court of Appeals has trangressed her right to due process and equal protection by placing her between such a Scylla and Charybdis.

Conclusion

For the foregoing reasons, your petitioner prays that this Court exercise its power of supervision to insure the proper functioning of the federal judiciary; address the important federal questions presented by this petition; resolve the referenced intra-circuit conflict regarding federal abstention and professional

disciplinary matters as well as the equation of due process with a fair appeal; and reconcile the conflict between this case and applicable precedent of this Court.

RESPECTFULLY SUBMITTED,

Zena D. Crenshaw, *Petitioner Pro Se*
CRENSHAW PROFESSIONAL OFFICES
4581 Broadway Gary, IN 46409
(219)980-2055 [fax](219)887-8109

APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ZENA CRENSHAW,	)	
	)	
Plaintiff,	)	
v.	)	No. IP 98-0240-C-M/S
	)	
THE SUPREME COURT	)	
OF INDIANA, et. al.,	)	
	)	
Defendants.	)	

JUDGMENT

The court, having this day made its Entry,

IT IS THEREFORE ADJUDGED that this cause of action is dismissed without prejudice.

LARRY J. McKINNEY, Judge
United States District Court

Date: 7/1/98

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ZENA CRENSHAW,	)	
	)	
Plaintiff,	)	
v.	)	No. IP 98-0240-C-M/S
	)	
THE SUPREME COURT	)	
OF INDIANA, et. al.,	)	
	)	
Defendants.	)	

ENTRY DISCUSSING MOTION TO DISMISS AND DIRECTING ENTRY OF JUDGMENT

The court finds that it must abstain from the plaintiff's challenge to the ongoing attorney discipline proceeding in which she is involved and to aspects of the disciplinary rule of the Indiana Supreme Court on which that proceeding is based. Accordingly, the defendant's motion to dismiss is granted. This conclusion rests on the following facts and circumstances:

1. Plaintiff Crenshaw is an attorney licensed to practice before the Indiana Supreme Court and the lower courts of Indiana. A complaint charging her with misconduct has been lodged with the Disciplinary Commission of the Indiana Supreme Court ('Disciplinary Commission'). That complaint has triggered the following process:

> Disciplinary actions before the Indiana Supreme Court are conducted in accordance with the

Indiana Admission and Discipline Rules. As a general matter, the initial or investigative step occurs when the Commission's Executive Secretary inquires in the charges brought against an attorney to determine whether 'there is a reasonable cause to believe that the respondent is guilty of misconduct. . . .' Ind.Admin.Disc.R. 23(10)(b). If the Executive Secretary determines that such cause exists, the grievance is then passed on to the whole Commission, which may either dismiss the grievance or file a complaint with the Indiana Supreme Court.

Once a complaint is filed, the Supreme Court appoints an officer to preside over the disciplinary hearing. The adjudicative stage of the proceedings then commences with an adversarial hearing, where the attorney charged with misconduct is given an opportunity to respond to the charges, be represented by counsel, cross-examine witnesses and produce evidence and witnesses on his own behalf. After the hearing, the hearing officer 'shall determine whether misconduct has been proven by clear and convincing evidence and shall submit to the Supreme Court written findings of fact.' Disc.R.23(14)(f).

The appellate stage of the disciplinary proceedings begins when either the charged attorney or the Commission files a petition for review of the findings or recommendations with the Indiana Supreme Court. The court may either adopt the findings and recommendations submitted or, after review of the record, issue its own findings and discipline.

Sterns v. Lundberg, 922 F.Supp. 164, 166-67

(S.D.Ind. 1996).

2. The matter involving Crenshaw has passed the investigative stage and has resulted in the filing of a grievance. In conjunction with that grievance, the executive secretary of the Disciplinary Commission issued a subpoena to Crenshaw for the production of certain materials. Crenshaw challenged the subpoena, which the Disciplinary Commission then found should be honored. This action followed. Through it, Crenshaw seeks to have enforcement of the subpoena halted, the disciplinary proceeding stayed, and portions of the Indiana Disciplinary Rule 23 declared invalid.

3. The United States Supreme Court has established a three-part test for determining whether a federal court should abstain from interfering in a state's bar disciplinary proceeding. *See Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982) (citing *Younger v. Harris*, 401 U.S. 37 (1971)). Specifically, a federal court should abstain if:

> (1) the bar disciplinary proceeding is currently ongoing;
>
> (2) this proceeding implicates an important state interest; and
>
> (3) the disciplinary proceeding provides an adequate opportunity for the respondent to raise constitutional challenges.

See Middlesex, 457 U.S. at 432, 433-35; *Younger*, 401 U.S. at 43-55.

4. The foregoing three circumstances are present. This is so even as to the third factor, which Crenshaw contends will force her to

litigate the subpoena (to which she objects on Fourth Amendment grounds) in the context of an action for contempt if she elects to disobey it. '[T]he burden on this point rests on the federal plaintiff to show that state procedural law barred presentation of [her] claims.' *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 14 (1987) (internal quotation marks and citations omitted).

> There is nothing in the Admission and Discipline Rules prohibiting the hearing officer from considering federal constitutional challenges to the disciplinary proceedings. The charged attorney can also appeal to the Indiana Supreme Court, where she 'may again challenge the constitutionality of the statute itself.' *Sekerez v. Supreme Court of Indiana*, 685 F.2d 202, 206 (7th Cir. 1982). Indeed, the Indiana Supreme Court has considered such challenges in the past, see *Matter of Friedland*, 275 Ind. 214, 416 N.E.2d 433 (1981) (First Amendment challenges considered); *Matter of Kesler*, 272 Ind. 161, 397 N.E.2d 574 (1979) (procedural due process challenge considered).
>
> *Sterns*, 922 F.Supp. at 169.

5. There is nothing in the pleadings, the defendants' motion to dismiss or Crenshaw's response which suggests that the Indiana Supreme Court could not or would not entertain a constitutional challenge to the subpoena issued by the Disciplinary Commission. On the contrary, Crenshaw can challenge the subpoena in the Indiana Supreme Court based only on its issuance, apart from (and obviously prior to) a setting in which she would face an action for contempt if she failed to obey it. Crenshaw argues that the prior resolution of a complaint brought by her against a state court judge portends some degree of prejudice against her, but there is no factual basis for this position. Crenshaw was not even a party to the prior proceeding, and

neither this concern nor any other which Crenshaw discusses suggest that 'extraordinary circumstances' could exist which would permit this court to exercise jurisdiction over Crenshaw's claims. *Middlesex*, 457 U.S. at 435; *Younger*, 401 U.S. at 53.

6. Abstention is based upon the theory that the accused should first present her defense in the state courts, unless it plainly appears that this course would not afford adequate protection. *See Storment v. O'Malley*, 938 F.2d 86, 88 (7th Cir. 1991) ('[T]he United States Supreme Court has espoused a strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances.'). It is assumed that state procedures will provide an adequate remedy in the absence of unambiguous authority to the contrary. *Id.* at 90; *Pincham v. Illinois Judicial Inquiry Bd.*, 872 F.2d 1341, 1348 (7th Cir. 1989). That assumption is supported in this case by the positive demonstration of adequate remedies for Crenshaw and has not been overcome by her.

7. 'Clearly, abstention is appropriate unless state law clearly bars the interposition of the constitutional claims.' *Moore v. Sims*, 442 U.S. 415, 425-26 (1979). No such impediment exists with respect to federal claims which Crenshaw may have in connection with the proceeding currently being considered by the Disciplinary Commission. Accordingly, the defendants' motion to dismiss on grounds of abstention must be granted. Judgment consistent with this Entry shall now issue.

IT IS SO ORDERED.

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ZENA CRENSHAW,	)	
	)	
Plaintiff,	)	
v.	)	No. IP 98-0240-C-M/S
	)	
THE SUPREME COURT	)	
OF INDIANA, et. al.,	)	
	)	
Defendants.	)	

ORDER

This cause comes before the Court on Plaintiff's Verified Motion to Amend Findings and the Judgment Accordingly,

And the Court, being duly advised, now OVERRULES Plaintiff's Motion.

IT IS SO ORDERED this 16th day of July, 1998.

LARRY J. McKINNEY, Judge
United States District Court

APPENDIX D

In the
United States Court of Appeals
for the Seventh Circuit

No. 98-2882

Zena D. Crenshaw,

Plaintiff-Appellant,

v.

The Supreme Court of Indiana, *et al.*,

Defendants' Appellees.

Appeal from the United States District Court
for the Southern District of Indiana, Indianapolis Division.
No. 98 C 240 - Larry J. McKinney, *Judge.*

Submitted January 7, 1999* - Decided March 15, 1999

Before Ripple, Manion and Kanne, *Circuit Judges.*

Ripple, *Circuit Judge.* Zena D. Crenshaw, an attorney appearing pro se, brought this action in the district court to challenge Rule 23 of the Indiana's attorney disciplinary rules. She alleged that a subpoena issued to her by the Disciplinary Commission of the

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* After an examination of the briefs and the record, we concluded that oral argument was unnecessary, and the appeal was submitted on the briefs and the record. *See* Fed. R. App. P. 34(a).

Supreme Court of Indiana ("the Commission"), Indiana's attorney regulatory agency, violated her constitutional rights. She named as defendants the Supreme Court of Indiana, its five justices in their personal and official capacities, the Commission, and its Executive Secretary and a staff attorney, also in their personal and official capacities. The district court dismissed the action without prejudice on abstention grounds. On appeal, Ms. Crenshaw principally argues that the district court erred in abstaining because the Commission's investigation is merely incipient and cannot be characterized as an ongoing proceeding. We dismiss the action against the Supreme Court of Indiana and the Commission because the Eleventh Amendment bars suit against them in federal court. *See Johnson v. Supreme Court of Illinois*, No. 98-2587, 1999 WL 23193, at *1(7th Cir. Jan. 21, 1999); *Landers Seed Co. v. Champaign Nat'l Bank*, 15 F.3d 729, 731-32 (7th Cir.), *cert. denied*, 513 U.S. F.3d 399 (7th Cir. 1996). In all other respects, for the reasons set forth in the following opinion, we affirm the judgment of the district court.

I

BACKGROUND

A.

This case arises out of a grievance filed with the Commission in July 1996 regarding alleged misconduct by Ms. Crenshaw in the administration of her deceased mother's estate. After considering Ms. Crenshaw's response to the grievance, the Commission informed her in May 1997 that the grievance had been docketed and would be investigated further. In December 1997, the Commission again wrote to Ms. Crenshaw and informed her that its investigation was continuing. That mailing included a subpoena that sought information about specific expenditures and about her private and business bank accounts. In January 1998, Ms. Crenshaw filed with the Commission a motion to quash the subpoena. The Commission

informed her one week later that is investigation was still ongoing. In March 1998, the Commission denied the motion to quash the subpoena.

In February 1998, Ms. Crenshaw filed this action in the district court. The complaint contained a challenge to the constitutionality of Rule 23 of the Indiana Rules for Admission to the Bar and the Discipline of Attorneys. Rule 23 is entitled "Disciplinary Commission and Proceedings" and describes Indiana's methods for determining, investigating, and punishing attorney misconduct. Ms. Crenshaw alleged that Rule 23, especially its Sections 8(d) and 9(f) (granting the Commission and its Executive Secretary the authority to issue subpoenas duces tecum), is unconstitutional. Ms. Crenshaw claimed a violation of her Fourth Amendment rights, as made applicable to the states through the Fourteenth Amendment, because any subpoena issued pursuant Rule 23 is considered presumptively valid. Such a subpoena, she alleged, subjected her to investigation by the Commission without adequate safeguards against unreasonable search and seizure. Ms. Crenshaw also alleged that Rule 23 gave the defendants excessive discretion "to investigate every aspect of her life." Appellant's Brief at 4. She asked the district court to declare that Rule 23 in whole or in part was unconstitutional, to enjoin the defendants from continuing their investigation pending the court's review of Rule 23, and to enjoin the defendants form undertaking unconstitutional actions under the Rule.

B.

Noting that the abstention doctrine established in *Younger v. Harris,* 401 U.S. 37 (1971), had been made applicable to attorney disciplinary proceedings in *Middlesex County Ethics Committee v. Garden State Bar Ass'n,* 457 U.S. 423, 432-37 (1982), the district court determined that it must abstain from exercising its jurisdiction. In abstaining from exercising jurisdiction over Ms. Crenshaw's suit, the district court determined that the Commission's investigation

satisfied the three-part test in *Middlesex*. The investigative proceeding 1) was both ongoing and "judicial in nature", 2) implicated important state interests; and 3) allowed Ms. Crenshaw an adequate opportunity to raise constitutional challenges. *Id.* at 432. After briefly summarizing Indiana's procedures for processing and investigating grievances filed against attorneys, the court determined that the Commission's proceedings against Ms. Crenshaw had "passed the investigative stage and [had] resulted in the filing of a grievance." R.15 at 2. Therefore, the district court determined that the Commission's actions had to be characterized as ongoing judicial proceedings that implicated important state interests. The court found further that nothing in the record suggested that Ms. Crenshaw would be barred from raising her constitutional claims in state court. Therefore, there was no "impediment" to the full and fair consideration of Ms. Crenshaw's potential federal claims in the course of the state proceedings.

II

DISCUSSION

A.

We review *Younger* abstentions under a de novo standard of review. *See Majors v. Engelbrecht*, 149 F.3d 709, 712 (7th Cir. 1998); *Trust & Inv. Advisers, Inc. v. Hogsett*, 43 F.3d 290 (7th Cir. 1994). Ms. Crenshaw contends that the district court erred in its abstention analysis. She asks that we focus on the court's treatment of the first and third prongs of the *Middlesex* test for abstention.

With respect to the first prong, she submits that the district court mistakenly concluded that the Commission's proceeding against her was ongoing. In her view, the proceedings against her remain in the investigative stage; the subpoena was intended to "facilitate the underlying investigation, not advance it to another phase."

Appellant's Brief at 21. She points out that the Commission did not deny her motion to quash the subpoena until a month after she filed her complaint with the federal district court. Consequently, she submits, there was no ongoing state judicial proceeding when she filed her claim.

The district court correctly determined that there was an ongoing state disciplinary proceeding at the time of the filing of the federal complaint. Under the Indiana attorney disciplinary rules, a proceeding moves beyond the initial stage once the Executive Secretary of the Commission dockets a grievance and undertakes investigatory procedures beyond the preliminary investigation. *See* Rule 23, § 10. In this case, the Commission's Executive Secretary issued the subpoena after considering Ms. Crenshaw's initial response to the grievance and concluding that the matter warranted further, more detailed investigation. Because the Commission had begun its formal investigation, which occurs only after the initial phase of response by the attorney and preliminary investigation by the Executive Secretary, the proceedings against Ms. Crenshaw must be considered ongoing. *See Huffman v. Pursue*, 420 U.S. 592, 607 (1975).

Our holding today is consonant with that of the other circuits that have considered the issue and recognized that attorney disciplinary proceedings, by their nature, are progressive, incremental processes; the federalism concerns that *Younger* and *Middlesex* protect are implicated when the attorney is subject to a formal investigative procedure like the one contemplated by Rule 23, section 10(b).[1]

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[1] *See Hirsh v. Justices of the Supreme Court of California*, 67 F.3d 708, 712 (9th Cir. 1995) (disciplinary proceedings were ongoing after attorneys received notices to show cause); *Berger v. Cuyahoga County Bar Ass'n*, 983 F.2d 718 (6th Cir.) (upholding *Younger* abstention when attorneys filed federal action during course of grievance committee's investigation but before formal complaint was filed), *cert. denied*, 508 U.S. 940 (1993); *Mason v. Departmental Disciplinary Comm.*, 894

Ms. Crenshaw next submits that the Commission proceedings do not satisfy *Middlesex's* third prong because they do not ensure her an adequate opportunity to raise constitutional challenges. First, she argues that the subpoena process under Rule 23 punishes her if she actively challenges the Rule's unconstitutional elements; if she refuses to comply with the subpoena, Rule 23 threatens her with contempt of the Supreme Court of Indiana. *See* Rule 23, §§ 8(d), 9(f). We previously have noted, however, that a "chilling effect" on the exercise of constitutional rights is an insufficient basis to avoid the holding of *Younger*. The possible unconstitutionality of a rule does not justify an injunction against good-faith efforts to enforce that rule. *Pincham* 872 F.2d at 1350; *see also Younger*, 401 U.S. at 54.

Finally, Ms. Crenshaw submits that the proceeding does not allow her to challenge the constitutionality of the Rule because the proceeding is biased against her. She alleged in her complaint that the Commission's investigation is "unlawful retaliation" for her publicly documented allegations of impropriety in the Indiana state courts. In essence, she is arguing for an application of the bad faith exception to the *Younger* doctrine. Ms. Crenshaw contends that the court improperly determined that she lacked a factual basis for her claim that Indiana state court judges, especially the Chief Justice of Indiana, are biased against her. In her view, the district court, considering the

---

F.2d 512 (2d Cir.) (*Younger* abstention was upheld when the Committee had not yet filed charges and, prior to his deadline for responding to disciplinary committee's notice of allegations against him, accused attorney sought federal court intervention), *cert. denied*, 497 U.S. 1025 (1990); *Hensler v. District Four Grievance Comm.*, 790 F.2d 390 (5th Cir. 1986) (upholding *Younger* abstention when attorney filed suit after receiving notice of grievance filed against him); *se also Pincham v. Illinois Judicial Inquiry Bd.*, 872 F.2d 1341 (7th Cir.) (concluding that disciplinary proceeding against state court judge was ongoing after the judge presented a legal argument in response to the Inquiry Board's proposed charges and the Inquiry Board decided to file a complaint), *cert. denied*, 493 U.S. 975 (1989); *cf. Fieger v. Thomas*, 74 F.3d 740 (6th Cir. 1996) (discussing application of *Middlesex* to state disciplinary rules and procedures).

matter in the context of the defendant's motion to dismiss, should have construed well-pleaded facts in the light most favorable to her. We cannot accept this argument. In order to establish her entitlement to the bad faith exception to the *Younger* doctrine, Ms. Crenshaw must allege specific facts to support her inferences of bad faith, bias, and retaliation. She must present more than mere allegations and conclusions. *See Pincham,* 872 F.2d at 1349-50. The record on appeal, however, provides no persuasive evidence that the Indiana state courts are biased or harbor bad faith toward Ms. Crenshaw. We agree with the district court that nothing in the record suggests that the Supreme Court of Indiana could not or would not fairly entertain a constitutional challenge to the subpoena.

B.

Finally, we cannot accept the argument that the district court abused its discretion in denying Ms. Crenshaw's post-judgment motion. Her motion asked the court to correct its misstatements of fact that, in her view, demonstrate the court's misconception that the Commission proceeding against her was actually ongoing. She notes, for instance, that the court used the word "complaint" when apparently referring to the "grievance" filed against her. Ms. Crenshaw contends that this difference in terminology is significant because, under Indiana procedure, a complaint is a formalized grievance that is filed later in the Commission proceeding. She also notes that the court erroneously stated that she had filed her federal action after the Commission had notified her of its refusal to quash its subpoena. Ms. Crenshaw points out that she filed her federal suit before the Commission decided her motion to quash the subpoena.

Neither the district court's misuse of terminology nor its inaccuracy in characterizing the timing of the filing of her federal suit affects the conclusion that the Commission proceedings were ongoing before she brought her case to federal court. Therefore, Ms. Crenshaw's motion presented neither a "manifest error of law or fact"

nor newly discovered evidence. *Moro v. Shell Oil co.*, 91 F.3d 872, 876 (7th Cir. 1996). Thus, the court did not abuse its discretion when it overruled Ms. Crenshaw's motion; its misstatements in its decision were harmless and did not lead the court to render an erroneous judgment. *See EEOC v. North Knox Sch. Corp.*, 154 F.3d 744, 746 (7th Cir. 1998); *Taylor v. Western & S. Life Ins. Co.*, 966 F.2d 1188, 1198 (7th Cir. 1992).

Conclusion

Ms. Crenshaw's action against the Supreme Court of Indiana and the Commission is dismissed because the suit is barred by the Eleventh Amendment. In all other respects, the district court's judgment must stand. The state disciplinary proceeding was commenced before Ms. Crenshaw brought her federal suit. The district court properly left the merits of both the proceeding and her suit to be resolved by state authorities. "When confronted with circumstances that clearly implicate *Younger* concerns, a federal court must abstain." *Barichello v. McDonald*, 98 F.3d 948, 955 (7th Cir. 1996). The judgment of the district court is affirmed. The defendants-appellees may recover their costs.

Affirmed as modified

APPENDIX B

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

April 12, 1999

Before

Hon. KENNETH F. RIPPLE, *Circuit Judge*

Hon. DANIEL A. MANION, *Circuit Judge*

Hon. MICHAEL S. KANNE, *Circuit Judge*

ZENA D. CRENSHAW, *Plaintiff-Appellant*	]	Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.
No. 98-2882 v.	]	
THE SUPREME COURT OF INDIANA, et al., *Defenants-Appellees.*	]	No. 98 C 240 Larry J. McKinney, Judge.

ORDER

Upon consideration of the petition for rehearing with suggestion for rehearing en banc filed by Plaintiff-Appellant on March 26, 1999, no judge in active service has requested a vote thereon, and all judges on the original panel have voted to deny the petition. Accordingly,

IT IS ORDERED that the petition for rehearing with suggestion for rehearing en banc be, and the same is hereby, DENIED.

APPENDIX F

IN THE
SUPREME COURT OF INDIANA

IN THE MATTER OF	]	
THE CONTEMPT OF THE	]	
SUPREME COURT OF	]	
INDIANA OF	]	45S00 9809 DI 506
ZENA D. CRENSHAW,	]	
	]	
Respondent.	]	

CONTEMPT OF COURT
Original Action

April 9, 1999

Per curiam

We find that the respondent, attorney Zena D. Crenshaw, is in contempt of this Court for failing to abide by investigative subpoenas issued to her by the Indiana Supreme Court Disciplinary Commission.

This case began on September 18, 1998, when the Commission filed its *Verified Information and Motion for Order to Show Cause why Respondent Should not be Held in Contempt of Court.* On January 8, 1999, the respondent filed her *Verified Motion to Dismiss for lack of Jurisdiction over Subject Matter.* The Commission responded on January 20, 1999. On January 25, 1999, we issued an *Order to Appear and Show Cause*, directing the respondent, in the event this Court denied her motion to dismiss, to appear and show cause why she should not be held in contempt of this Court for her failure to respond to the Commission's subpoenas. We denied the

respondent's motion to dismiss on February 18, 1999, and, accordingly, held a show cause hearing on February 23, 1999. The respondent appeared in person and the Commission was represented by staff attorney Robert C. Shook.

The respondent was admitted to the practice of law in this state in 1984, and maintains a private law practice in Gary, Indiana. A grievance was filed with the Disciplinary Commission alleging that respondent had acted unethically and, in effect, embezzled assets from her mother's estate to the detriment of her siblings. We have no basis at this point to evaluate this claim. The only event before us is the allegation and the fact that during the course of the Commission's investigation of alleged dishonest conduct on the part of the respondent, it sent to her two investigative subpoenas pursuant to Ind.Admission and Discipline Rule 23(9)(f). The subpoenas demanded production of certain documents relating to the alleged misconduct. Each was sent to her address as she had reported it to the Roll of Attorneys. The second subpoena was sent by certified mail and was duly acknowledged by the returned "green card." It was accompanied by a warning that her failure to comply with it could subject her to contempt proceedings. She never complied with either subpoena.

During the pendency of these proceedings, the respondent challenged the jurisdiction of the Commission and this Court by filing a complaint in the United States District Court for the Southern District of Indiana, alleging therein that certain provisions of Indiana Admission and Discipline Rule 23, governing attorney disciplinary proceedings, are constitutionally invalid. The district court dismissed the complaint on July 1, 1998, saying that federal intervention was unnecessary given that Indiana disciplinary proceedings, *inter alia*, provide adequate opportunity for the respondent to raise constitutional challenges. On July 16 the federal court declined to amend its findings and judgment. The respondent appealed that decision to the United States Court of Appeals for the Seventh

Circuit, where it was affirmed on March 15, 1999. On August 21, she sought a writ of prohibition from the Seventh Circuit against the Commission, which was denied. She is now seeking review of that denial by the United States Supreme Court. Claims of the unconstitutionality of the Commission's investigation, along with a narrative of her attempts to block the investigation with federal court intervention, constitute the substance of her January 8, 1999, motion before this Court to dismiss this contempt proceeding.

At the hearing on the Commission's motion to hold the respondent in contempt, the respondent made very general reference that "bias" on the part of the complaining party and the Commission staff fuels these proceedings. She asked that she be allowed to conduct discovery in order to substantiate her claims of bias and requested that she be allowed to preserve her other challenges. She also claimed that it is proper to wait and allow her to exhaust all avenues of redress with the federal courts before this matter is allowed to proceed.

Subpoenas may be subject to motions to quash, but we note that none has been filed with this Court in this case. Nonetheless, we will take the respondent's oral presentation as constituting a motion to quash and consider it in that light. In a civil case, the usual grounds for quashing a subpoena *duces tecum* are unreasonableness or oppressiveness. *Newton v. Yates,* 353 N.E.2d 485 (Ind.Ct.App. 1976). The burden is on the moving party to show why documents responsive to the subpoena should not be produced. *Id.*

The respondent's claims of bias are not supported by any substantive evidence at all, including even so much as a description of their nature, or who is claimed to be biased. In any event, claims of bias do not stop the Commission's investigation of alleged misconduct in its tracks. Lawyers, by virtue of their privilege of holding licenses to practice law, are duty-bound to respond to the Commission's requests for information. *See* Ind. Professional

Conduct Rule 8.1(b) (lawyers in connection with disciplinary matters shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority). This heightened obligation to comply with demands for information exceeds the obligation imposed upon nonlawyer citizens. If there is any basis for claiming the proceedings against the respondent are not being pursued in good faith by the Commission or anyone else, the respondent has provided us with no evidence to support that claim.

The respondent's other unsupported allegations, still unspecific after almost a year since their genesis, provide no evidentiary basis to quash the subpoenas. The federal courts have declined at every turn her invitations to intervene in this matter. Presumably this reflects their view that the proper, indeed only means to challenge the propriety of a pending investigation by the Disciplinary Commission is to appear and respond on the merits to the allegations. In fact, we view her strategy as not so much to put before us legitimate assertions of bias, but rather to use vague and wholly unsubstantiated claims of bias on the part of unidentified persons to camouflage attempts to dictate the procedure employed to resolve the grievance. She cites to us precedent stating that one cannot be held in contempt for failing to abide by an order which a court has no authority to issue. *State ex rel. Leffingwell v. Superior Court No. 2 of Grant County,* 262 Ind. 574, 321 N.E.2d 568 (1974). While that may be accurate as an abstract legal proposition, it has no application to this case because the subpoenas the respondent ignored are valid.

Because the respondent has presented no grounds for quashing the subpoenas, we are left only with the fact that she twice knowingly refused to comply with their directives. As such, we find that her conduct is contemptuous.

This Court has inherent and statutory power to punish contempt of its authority and process. I.C. 33-2-1-4; *Matter of*

Crumpacker, 431 N.E.2d 91 (Ind. 1982). Our primary objective in cases where a disciplinary respondent fails to abide by a Commission subpoena is to exact compliance with the directive contained in that subpoena. *See, e.g., Vandekooi v. Echelbarger*, 250 Ind. 175, 235 N.E.2d 165 (1968) (primary object of civil contempt proceeding to coerce action for the benefit of an aggrieved party damaged by the failure of another to conform to a court order). We can determine no basis for respondent's refusal to comply with a facially valid subpoena. Certainly respondent has provided no basis to quash the subpoena. Her unexplained and unsupported refusal to cooperate with the Commission is a serious violation of her professional responsibility, regardless of the merits of any response she may have.

The standard sanctions used for contempt are fines or incarceration until the respondent complies with whatever legal obligation is the subject of the contempt. Here, there is a unique nexus between the refusal to respond to the subpoena and the fact that the refusal is that of a lawyer under investigation for professional misconduct. In effect, the respondent has managed to demonstrate professional misconduct before our very eyes. There being no other appropriate sanction, we find that the respondent should be suspended from the practice of law in this state until such time as she complies with the Commission's subpoenas.

IT IS, THEREFORE, ORDERED that the respondent, Zena D. Crenshaw, is suspended from the practice of law in this state, effective thirty (30) days from the date of this order. The respondent is ordered to file the affidavit required by Admis.Disc.R. 23(26)(c)(1). To be reinstated to the practice of law, she must purge herself of her contempt of this Court by fully complying with the Disciplinary Commission's amended subpoenas, issued July 22, 1998, and August 27, 1998. The Disciplinary Commission is directed to notify this Court in writing of the respondent's compliance with the directives of those subpoenas.

The Clerk of this Court is directed to provide copies of this Order to the respondent, to the Indiana Supreme Court Disciplinary Commission, and to all other entities pursuant to Admis.Disc.R.23(3)(d), governing suspension.

Costs of this proceeding are assessed against the respondent.